

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES DOUD and MELODIE DOUD,

Plaintiffs,

v.

YELLOW CAB OF RENO, INC.,

Defendant.

3:13-cv-00664-WGC

ORDER

Re: ECF No. 135

Before the court is Defendant Yellow Cab of Reno, Inc.'s (Yellow Cab) Motion for Reconsideration of this Court's Order Granting Summary Judgment on Defendant's 25th Affirmative Defense Dated March 30, 2015. (ECF No. 135.)¹

The court finds Yellow Cab's motion to be completely without merit; therefore, it issues the instant order denying the motion even though the Plaintiffs, James and Melodie Doud (the Douds), have not had an opportunity to respond in order to conserve time and resources of both the parties and the court.

I. BACKGROUND

On September 1, 2014, the Douds filed a motion for partial summary judgment as to Yellow Cab's 25th Affirmative Defense. (ECF No. 31.) The 25th affirmative defense asserted that Mr. Doud was an independent contractor and not an employee of Yellow Cab, and therefore was precluded from recovery under Title I of the Americans with Disabilities Act (ADA). (ECF No. 31.) Yellow Cab filed its response on October 2, 2014. (ECF No. 38.) The Douds filed their reply brief on October 17, 2014. (ECF No. 42.) On March 30, 2015, the court issued its order granting summary judgment in favor of the Douds with respect to Yellow Cab's 25th affirmative defense. (ECF No. 79.) Now, nearly six months after that order was entered, Yellow Cab has

¹ Refers to court's Electronic Case Filing number.

1 filed this motion for reconsideration. Yellow Cab argues: (1) the court erred when it failed to
 2 analyze the independent contractor versus employee issue under Nevada law; and (2) the issue of
 3 whether Mr. Doud was an independent contractor or employee should have been reserved for the
 4 jury.

5 **II. LEGAL STANDARD**

6 The Federal Rules of Civil Procedure do not contain a provision governing the review of
 7 interlocutory orders. "As long as a district court has jurisdiction over the case, then it possesses
 8 the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause
 9 seen by it to be sufficient." *City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254
 10 F.3d 882, 885 (9th Cir. 2001) (internal quotation marks and citation omitted) (emphasis omitted).
 11 This inherent power is grounded "in the common law and is not abridged by the Federal Rules of
 12 Civil Procedure." *Id.* at 887. While other districts in the Ninth Circuit have adopted local rules
 13 governing reconsideration of interlocutory orders, the District of Nevada has not. Rather, this
 14 district has used the standard for a motion to alter or amend judgment when confronted with a
 15 motion to reconsider an interlocutory order. *See, e.g., Henry v. Rizzolo*, No. 2:08-cv-00635-PMP-
 16 GWF, 2010 WL 3636278, at * 1 (D. Nev. Sept. 10, 2010) (quoting *Evans v. Inmate Calling*
 17 *Solutions*, No. 3:08-cv-00353-RCJ-VPC, 2010 WL 1727841, at *1-2 (D. Nev. Apr. 27, 2010)).

18 Therefore, in this district, a motion for reconsideration should set forth: "(1) some valid
 19 reason why the court should revisit its prior order, and (2) facts or law of a 'strongly convincing
 20 nature' in support of reversing the prior decision." *Rizzolo*, 2010 WL 3636278, at * 1 (citation
 21 omitted). Moreover, "[r]econsideration is appropriate if the district court (1) is presented with
 22 newly discovered evidence, (2) committed clear error or the initial decision was manifestly
 23 unjust, or (3) if there is an intervening change in controlling law." *Id.* (citation omitted).

24 **III. DISCUSSION**

25 **A. Federal Common Law of Agency Controls the Court's Determination of this Issue**

26 Yellow Cab argues that the court erred when it applied the federal common law of
 27 agency instead of Nevada law to determine whether Mr. Doud was an employee or independent
 28 contractor, relying on the fact that Mr. Doud entered into a contract with Yellow Cab in Nevada

1 that stated he was an independent contractor. (ECF No. 135 at 2-3.) Yellow Cab maintains that
2 Nevada law governs the interpretation of this contract, and under Nevada law Mr. Doud would
3 be deemed an independent contractor.

4 The court concludes that it did not err in applying the federal common law of agency in
5 determining whether Mr. Doud was an employee or independent contractor. Yellow Cab's
6 motion acknowledges this action was brought under a federal statute—the Americans with
7 Disabilities Act (ADA), but nevertheless argues that Nevada law applies to the determination of
8 whether a person is considered an independent contractor or employee when the entity they are
9 working for is accused of violating the ADA's provisions.

10 Yellow Cab does not mention that the ADA itself defines an employee as “an individual
11 employed by an employer.” 42 U.S.C. § 12111(4). As the court thoroughly discussed in its order,
12 where the term “employee” is defined by federal statute, federal courts have applied the federal
13 common law of agency to determine employer versus independent contractor status. The
14 Supreme Court did this in determining who qualifies as an employee under the Employee
15 Retirement Income Security Act of 1974) (ERISA), *Nationwide Mutual Insurance Co. v.*
16 *Darden*, 503 U.S. 318, 323-24 (1992), and subsequently in the ADA context, *Clackamas*
17 *Gastroenterology Associates, P.C. v. Wells*, 538 U.S. 440 (2003). The Ninth Circuit has done so
18 in the Title VII context. *See Murray v. Principal Financial Group, Inc.*, 613 F.3d 943 (9th Cir.
19 2010); *N.L.R.B. v. Friendly Cab Co., Inc.*, 512 F.3d 1090, 1096 (9th Cir. 2008) (applying federal
20 common law of agency in the Title VII context). Even when the term “employee” is not defined
21 by statute, the Supreme Court has applied federal common law agency principles. *See*
22 *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 738-39 (1989). Yellow Cab
23 blatantly ignores ample federal authority that federal common law agency principles apply to a
24 determination of independent contractor versus employee status under the ADA. Nor does
25 Yellow Cab's motion include any discussion regarding how the court erred in relying on this
26 authority. In fact, it does not even mention these cases.

27 If Mr. Doud or Yellow Cab had brought an action for breach of contract or if the
28 determination of his status implicated a Nevada statute, those claims would have been resolved

1 applying Nevada law. That is not the case here. Mr. Doud chose to vindicate his rights under a
2 federal statute which expressly defines “employee.” As indicated above, the Supreme Court has
3 determined federal common law agencies apply to resolve this issue.

4 Even more detrimental to Yellow Cab’s argument is that the Ninth Circuit applied the
5 federal common law of agency to determine the independent contractor versus employee issue in
6 a case that specifically involved taxi cabs, where the drivers also had signed agreements that
7 stated they were independent contractors. *See N.L.R.B. v. Friendly Cab Co., Inc.*, 512 F.3d 1090,
8 1096 (9th Cir. 2008). The Ninth Circuit did *not* apply state law to resolve the issue of whether
9 the drivers in *Friendly* were independent contractors or employees. Instead, it applied federal
10 common law agency principles, and noted that the agreement was one factor to be considered,
11 but was *not determinative* of the relationship between the parties. Therefore, the court is
12 confident it correctly applied the federal common law of agency in determining this issue. The
13 court considered the fact that the drivers signed contracts stating that they were independent
14 contractors and stated that this weighed in favor of independent contractor status; however, the
15 majority of the other considerations weighed in favor of finding Mr. Doud was an employee. As
16 such, reconsideration is not warranted on this basis.

17 **B. The Independent Contractor Versus Employee Issue Was Appropriately Resolved by**
18 **the Court as a Matter of Law Because No Genuine Dispute as to any Material Fact was**
19 **Presented to the Court in Connection with the Motion**

20 Yellow Cab next argues that the issue of whether Mr. Doud was an employee or
21 independent contractor should have been reserved for the jury. (ECF No. 135 at 4.)
22 Yellow Cab cites Federal Rule of Civil Procedure 56, which states that summary judgment
23 should only be granted when “there is no genuine issue as to any material fact” and case law
24 interpreting Rule 56. (*Id.* at 4-5.) Yellow Cab also argues that the Ninth Circuit has consistently
25 held that the determination of independent contractor versus employee status is a question of
26 fact, this is only the case when there are *disputed* issues of fact. When the court decided this
27 motion, there were no *disputed* issues as to any *material* fact. Nor does Yellow Cab point to any
28 at this juncture. It includes a conclusory statement that the evidence is disputed, but points to no

1 specific evidence presented to the court in connection with the motion on the 25th affirmative
2 defense, or otherwise, that would have required the court to reserve the issue for a jury.
3 Therefore, it was appropriate for the court to resolve this issue as a matter of law, and
4 reconsideration is not warranted on this basis.

5 **IV. CONCLUSION**

6 There is no basis for the court to reconsider its order granting summary judgment in favor
7 of the Douds as to Yellow Cab's 25th affirmative defense. Therefore, Yellow Cab's motion
8 (ECF No. 135) is **DENIED**.

9 **IT IS SO ORDERED.**

10 Dated: September 18, 2015.

11  _____
12 WILLIAM G. COBB
13 UNITED STATES MAGISTRATE JUDGE
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